

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-183560

DATE: October 17, 1975

MATTER OF: Unitron Engineering Company

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DIGEST:

1. Protester was not prohibited from submitting "all or none" offer as alleged because paragraph 10(c) of Standard Form 33A clearly permits "all or none" offers.
2. RFP clause providing that Government may evaluate offers on the basis of the relative merits of multiple awards does not preclude "all or none" offers because the clause merely reserves the right to make multiple awards and does not require them.
3. Protester's contention that award was improper because successful offeror had been dissolved was not considered on the merits because this Office has discontinued review of affirmative determinations of responsibility in absence of fraud.

Request for proposals (RFP) No. N00104-75-R-1974 was issued by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, for the procurement of electronic workbench cabinet assemblies, base cabinet assemblies, back panels and shelves, distribution boxes, and auxiliary table assemblies. The procurement was negotiated under the authority of Armed Services Procurement Regulation (ASPR) § 3-201.2(b)(ii)(A) (1974 ed.), as a total small business set-aside. In view of the urgent need for the items, conventional negotiation was used in lieu of Small Business Restricted Advertising. Seventy-three firms were solicited, nine of which responded. Although the protester, Unitron Engineering Co. (Unitron), had submitted the lowest price for Items 0001 and 0005, award was made to Dayton Manufacturing Co. (Dayton), whose "all or none" offer was at a total price well below the best combination available to the Government through multiple awards. The "all or none" offer of Dayton was considerably less than the aggregate of the line item prices submitted by Unitron.

Unitron maintains that it was not apprised by the solicitation that "all or none" offers were acceptable. Specifically, Unitron contends that paragraph 10(c) of Standard Form 33A, which was incorporated into the solicitation, "is intended to allow a bidder to quote

on 'limited' quantities of items or, where multiple items are called for, allow a bidder to limit his quotation to a portion of the items." Paragraph 10(c) reads as follows:

"(c) The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED AT THE UNIT PRICES OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER."

We believe the protest reflects a misunderstanding of paragraph 10(c). On a previous occasion, this Office has stated: "It is clear from the language of the provision itself [paragraph 10(c)] that a bidder may specify and bind the Government to award of the total quantity upon acceptance of a bid so specifying." 54 Comp. Gen. 416, 419, 74-2 CPD 278 at 4 (1974). Paragraph 10(c) reserves to the Government the right to make awards for any item, group of items, or for a quantity less than offered, "unless the offeror qualifies his offer by specific limitations." (Emphasis added.) Thus, paragraph 10(c) specifically permits an offeror to limit by means of an "all or none" offer the freedom of choice reserved by the Government.

The protester further argues that "all or none" offers were prohibited by clause D-4 of the solicitation, which provides:

"D-4 EVALUATION OF OFFERS (MAR. 1964)

In addition to other factors, offers will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of \$90 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items and combination of items which result in the lowest aggregate price to the Government, including such administrative costs."

Clause D-4 reserves to the Government the right to evaluate the possibility of making multiple awards. In fact, the provision serves notice to potential "all or none" offerors that where multiple awards yield the lowest aggregate cost, such awards may be made. Where, as here, solicitation permits multiple awards, it is well settled that an "all or none" offer lower in the aggregate than any combination of

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individual offers may be accepted by the Government even though a partial award could be made at a lower unit cost. 54 Comp. Gen. 416, 419-20, 74-2 CPD 278 at 5 (1974). In view thereof, we believe the award to Dayton on the basis of its low "all or none" offer was consonant with the terms of the solicitation.

Unitron also contends that the award was improper because Dayton had been dissolved and its operations assumed by a W.L. Lakin Co., Inc. The contracting officer disputes this allegation and, based upon the information obtained by a preaward survey, determined Dayton to be a responsible prospective contractor.

This Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See 54 Comp. Gen. 66, 74-2 CPD 64 (1974). Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids. Since no fraud has been alleged or demonstrated, we must decline to further consider the matter.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States